

Supplemental Guidance for preparing
Plans and Specifications
for
Clean Water State Revolving Fund Projects

This supplemental guidance applies to projects that receive funding through the American Recovery and Reinvestment Act of 2009 (ARRA)

Part 1: Davis-Bacon and Related Acts

The bidding documents must include the current U.S. Department of Labor wage rates for the project. Wage rates may be downloaded from <http://www.wdol.gov/> and clicking on “Selecting DBA WDs”. Select the appropriate Wage Determination for your project and include it in the specifications when you advertise for bids. Recheck the Wage Determination ten days before bid opening, and if it has been revised, the revised version must be issued to bidders as an addendum.

Some consulting engineers have staff members that are capable of monitoring Davis-Bacon and Related Acts requirements, and others may not. There are administrative consultants that specialize in monitoring and managing contractor submittals and conformance with Davis-Bacon and Related Acts requirements. An administrative consultant engaged for this purpose is considered an eligible project cost.

The following text must be included in the bidding documents:

TITLE 29--LABOR

PART 5 - LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING
FEDERALLY FINANCED AND ASSISTED CONSTRUCTION

Subpart A - Davis-Bacon and Related Acts Provisions and Procedures

Sec. 5.5 Contract provisions and related matters.

(a) The Louisiana Department of Environmental Quality requires the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in Sec. 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the

Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting

officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The (write in name of the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Louisiana Department of Environmental Quality may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program

described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Louisiana Department of Environmental Quality if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Louisiana Department of Environmental Quality. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Louisiana Department of Environmental Quality if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the Louisiana Department of Environmental Quality, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under Sec. 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Sec. 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the

applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the ``Statement of Compliance'' required by paragraph (a) (3) (ii) (B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a) (3) (i) of this section available for inspection, copying, or transcription by authorized representatives of the Louisiana Department of Environmental Quality or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Louisiana Department of Environmental Quality may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid

in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Louisiana Department of Environmental Quality may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility. (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a) (1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a) (1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Secretary of the Louisiana Department of Environmental Quality shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b) (1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Sec. 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b) (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b) (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b) (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any

other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b) (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b) (1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in Sec. 5.1, the Secretary of the Louisiana Department of Environmental Quality shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Secretary of the Louisiana Department of Environmental Quality shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Louisiana Department of Environmental Quality and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Part 2: Buy American

Section 1605 of the American Recovery and Reinvestment Act of 2009 (ARRA) provides for the use of American iron, steel, or manufactured goods in projects funded with funds made available from ARRA. Specifically, subsection (a) states that “None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.”

There are exceptions to the above requirement is subsection (b), which states “Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency finds that –

- (1) applying subsection (a) would be inconsistent with the public interest;
- (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.”

According to guidance from the Environmental Protection Agency (EPA), there are several ways to comply with the Buy American requirements.

1. Exclusively procure iron, steel, and manufactured goods that meet the definition of being “manufactured in the United States” (preferred method);
2. Any non-domestically manufactured items are covered by a categorical (national) waiver;
3. Obtain a project-specific waiver for any non-domestically manufactured items not covered by a categorical (national) waiver.

A manufactured good is a good brought to the construction site for incorporation into the work that has been processed into a specific form and shape, or combined with other raw material to create a material that has different properties than the properties of the individual raw materials. There is no requirement with regard to the origin of the components in the manufactured goods; only that the manufacturing occurs in the United States.

Manufacturing does not include: cosmetic or surface changes (painting, cleaning); cutting material to a particular size or shape; or simple assembly of components that were all shipped by one company with the intent of providing all components to be assembled into a functional good.

EPA may issue categorical (national) waivers if it finds that subsection 1605(b)(1),(2), or (3) of ARRA would apply to all projects in the U.S. that meet certain categorical conditions. To date EPA has issued three categorical waivers:

1. Refinancing Waiver: applies only to projects that incurred debt on or after October 1, 2008 and before February 17, 2009. Rationale: Some projects may have incurred debt before the ARRA was signed into law. Prior to that date, the House and Senate versions contained different language and it was not certain what the Buy American requirements would be. EPA decided it would be in the national interest to waive the Buy American requirements for projects that incurred debt before the final version of the bill became law. It is not anticipated that any Louisiana projects will fall under this waiver.
2. Bid Waiver: similar to the Refinancing Waiver but it applies specifically to projects that solicited bids between October 1, 2008 and February 17, 2009. It is not anticipated that any Louisiana projects will fall under this waiver.
3. De Minimis Waiver: applies to any project and allows exclusion of up to 5% of the total cost of materials used in and incorporated into a project from the Buy American requirements. Rationale: There are literally thousands of miscellaneous items used as components in construction projects for which the country of manufacture and the availability of alternatives are not readily or reasonably identifiable before procurement (e.g. screws, bolts, fasteners, etc). This waiver allows contractors to purchase these categories of goods, up to 5% of the total cost of materials used in the project, without verifying the country of origin. Louisiana projects may use this waiver and are encouraged to do so.

Additional categorical waivers may be issued by EPA as information becomes available. It is not necessary to request permission to use a categorical waiver; however records must be kept indicating which waivers are used and documenting the eligibility to use the waiver and copies of invoices for equipment and materials covered by the waiver.

Project specific waivers are those that apply to only one project. A request for a project specific waiver must also be based on the provisions in subsection 1605(b)(1),(2), or (3) of ARRA, and must come from the assistance recipient. No requests will be accepted by consultants or contractors. Any request for a project specific waiver must be sent by email directly to region6waiver@epa.gov.

What Consulting Engineers should do:

- When preparing plans and specifications for the project, specify only iron, steel, and manufactured goods that are produced in the U.S. if possible;
- Verify through manufacturers and suppliers that sufficient quantity and quality of goods are available for the project, and that the cost of domestic goods will not cause the overall project cost to increase by more than 25%;
- Write specific provisions into the contract documents to require the contractor to comply with the Buy American requirements;
- Conduct a pre-bid conference so potential bidders can understand these requirements and give feedback if they believe that a waiver may be necessary;
- If a waiver is necessary, assist in preparing the request;
- Verify that the contractor is in compliance with the Buy American requirements, taking into account any applicable waivers.

What Contractors should do:

- Review plans and specifications to determine if any specified iron, steel, or manufactured goods cannot be obtained from domestic producers;
- Attend the pre-bid conference (if held) to learn more about Buy American requirements;
- If the need for a waiver becomes evident after the contract is awarded, advise the consulting engineer immediately and attempt to minimize any work slowdown or stoppage while the request is being processed;
- Use of the De Minimis Waiver is encouraged. Otherwise it will be necessary to verify the origin of *all* iron, steel, and manufactured goods used in the project.
- Maintain appropriate records to demonstrate compliance.
- At project completion, certify compliance using appropriate certification form.

What Applicants should do:

- In the event a project specific waiver is required, provide all of the applicable information from the tables on the next two pages and submit directly to EPA. A copy should also be sent to the Louisiana Department of Environmental Quality.

Waiver Items

General – for waivers based on Cost or Availability

- Waiver is requested on the basis of either Cost and/or Availability. (*Note: questions related to the public interest waiver criteria should be directed to the Regional point of contact*)
- Waiver request includes the following information:
 - Description of the foreign and domestic construction materials
 - Unit of measure
 - Quantity
 - Price
 - Time of delivery or availability
 - Location of the construction project
 - Name and address of the proposed supplier
 - A detailed justification for the use of foreign construction materials
- Waiver request was submitted according to the State's instructions to SRF assistance recipients
- Assistance recipient made a good faith effort to solicit bids for domestic construction materials/manufactured goods, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor

For waivers based on Cost

- Waiver request includes the following information:
 - Price Comparison Worksheet shown in Table 1, completed by the prime contractor
 - Relevant excerpts from the bid documents used by the prime contractor to complete the Price Comparison Worksheet
 - Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers

For waivers based on Availability

- Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested:
 - Bid documents or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials
 - Documentation of the assistance recipient's efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers.
 - Project schedule
 - Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials
- Waiver request includes a statement from the prime contractor confirming the non-availability of the domestic construction materials for which the waiver is sought
- Has the State received other waiver requests for the materials described in this waiver request, for comparable projects?

Table 1: Foreign and Domestic Construction Materials Price Comparison Worksheet

Instructions: To be completed by the prime contractor. In column a), enter all construction materials and manufactured goods required to build the project as designed. In column b) enter the cost estimate for each component as supplied by domestic sources. In column c) enter the cost estimate for each component for which waivers are requested, as supplied by foreign sources.

(a) Construction Material	Unit of Measure	Quantity	(b) Price – Domestic Material*	(c) Price – Foreign Material*
			(d) Total Domestic Project Cost:	(e) Total Foreign Project Cost:

*Include all delivery costs to the construction site

The Department of Environmental Quality does not require any specific language in the contract documents; however the Environmental Protection Agency has suggested that the following language be used:

“The Contractor acknowledges to and for the benefit of the *Name of Applicant* ("Purchaser") and the State of Louisiana Department of Environmental Quality (the "State") that it understands the goods and services under this Agreement are being funded with monies made available by the federal American Recovery and Reinvestment Act of 2009 (ARRA) (or are being made available for a project being funded with monies made available by the federal ARRA) and such law contains provisions commonly known as "Buy American;" that requires all of the iron, steel, and manufactured goods used in the project be produced in the United States ("Buy American Requirements") including iron, steel, and manufactured goods provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the Buy American Requirements, (b) all of the iron, steel, and manufactured goods used in the project will be and/or have been produced in the United States in a manner that complies with the Buy American Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Buy American Requirements, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense or cost (including without limitation attorney's fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.”

For additional information, see the Buy American documents at <http://www.epa.gov/recovery/>.

Part 3: Reporting Requirements

Section 1512 of ARRA requires that recipients of funds submit periodic reports containing detailed information on the projects and activities funded by the Act. Each bidder should include the Data Universal Numbering System (DUNS) number on his bid. Any bidder that does not have a DUNS number can obtain one by applying at this site: <http://fedgov.dnb.com/webform/>. Numbers are generally issued within one business day.

Recipients are required to report an estimate of jobs directly created or retained by projects using ARRA funds. Jobs are reported by “full time equivalent” (FTE) positions. One FTE is assumed to be 2,080 hours per year (52 weeks times 40 hours) or 520 hours per quarter. In some cases, employees may not work 2,080 hours per year (taking paid holidays and leave time into consideration), and in those cases an FTE may be a different number.

Jobs are reported quarterly and the reports are cumulative. As an example, if a contractor’s workers worked 2,200 hours during the first quarter of a job, the contractor would report 4.23 FTE for the quarter (2,200/520). If those workers worked 2,000 hours in the next quarter, the contractor would report 4.04 as the cumulative FTE for both quarters (4,200/1,040).

Jobs are not limited to construction workers; they can include foremen, superintendents, resident inspectors, or others assigned duties related directly to the project. Workers only indirectly related to the project, such as material suppliers or clerical staff preparing reports, are not counted.

Consulting engineers that are paid with ARRA funds must also report on jobs created or retained.

Detailed guidance for reporting on jobs created or retained can be found in Section 5 of this document issued by the Office of Management and Budget:
http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf.

Part 4: Project Sign

A project sign will be required, but there is currently no guidance on the size and content. Guidance that is available at the present time states only that the ARRA logo must be displayed in a prominent location to inform the public that ARRA funds are being used for the project. There is no current requirement to display any specific project information, only the ARRA logo.

LDEQ is currently planning to purchase a supply of identical signs from a single vendor (at our expense) and make them available to projects. Should any additional guidance be forthcoming that changes this plan we will let you know immediately.